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Report of the Working Group on Arbitrary Detention

Chair-Rapporteur: Mads Andenas

Summary

In 2014 the Working Group on Arbitrary Detention, under its regular procedure, adopted 57 opinions concerning the detention of 422 persons in 30 countries. It also transmitted 136 urgent appeals to 48 Governments concerning 435 individuals. States informed the Working Group that they had taken measures to remedy the situation of detainees. In some cases, detainees were released; in other cases, the Working Group was assured that the detainees concerned would be guaranteed a fair trial. The Working Group is grateful to those Governments that heeded its appeals and that took steps to provide it with the requested information on the situation of detainees.

The Working Group engaged in continuous dialogue with countries that it visited, in particular in respect of its recommendations. Information on the implementation of recommendations made by the Working Group was received from the Government of El Salvador. In 2014, the Working Group visited New Zealand and undertook follow-up visits to Germany and Italy. The reports on these visits are contained in addenda to the present report (A/HRC/30/36/Add.2, 4 and 3, respectively).

Pursuant to Human Rights Council resolution 20/16, the Working Group is also submitting to the Council a report containing the draft basic principles and guidelines on remedies and procedures on the right of anyone deprived of his or her liberty by arrest or detention to bring proceedings before court (A/HRC/30/37), which were adopted by the Working Group at its seventy-second session. The draft basic principles and guidelines are aimed at assisting Member States in fulfilling their obligation to avoid arbitrary deprivation of liberty. The Working Group also prepared a report on national, regional and international laws, regulations and practices on the right to challenge the lawfulness of detention before court (A/HRC/27/47).

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In the present report, the Working Group analyses issues relating to detention in the context of drug control and to peaceful protests and arbitrary detention, and emphasizes the need of remedies for arbitrary detention as an imperative norm of international human rights law. In most cases, including where release is not a remedy, the individual has a right to compensation. Domestic law cannot erect barriers that would limit this right in the form of immunities, jurisdictional limitation, procedural hurdles or defences based on an Act of State doctrine.

In its recommendations the Working Group requests States to enforce the protection of every person's right to liberty under customary international law and to ensure that the available guarantees and safeguards are extended to cover all forms of deprivation of liberty, that persons are not held in pretrial detention for periods longer than those prescribed by law, and that such persons are promptly brought before a judge.

The Working Group recommends that the Human Rights Council change the title of the Working Group to the Working Group on Arbitrary Deprivation of Liberty and that it request the Working Group to prepare an in-depth analysis of detention as a consequence of international and national drug policies during 2016 and a report on the principles of legality, proportionality, necessity and appropriateness applicable to avoid arbitrary detention, during 2017.

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I. Introduction

1. The Working Group on Arbitrary Detention was established by the Commission on Human Rights in its resolution 1991/42 and entrusted with the investigation of instances of alleged arbitrary deprivation of liberty, according to the standards set forth in the Universal Declaration of Human Rights and the relevant international instruments accepted by the States concerned. The mandate of the Working Group was clarified and extended by the Commission in its resolution 1997/50 to cover the issue of administrative custody of asylum seekers and immigrants. At its sixth session, the Human Rights Council assessed and confirmed the mandate of the Working Group (Council resolution 6/4). On 26 September 2013, in its resolution 24/7, the Council extended the Working Group's mandate for a further three-year period.

2. During the period 1 January–31 May 2014, the Working Group was composed of Shaheen Sardar Ali (Pakistan), Mads Andenas (Norway), Roberto Garretón (Chile), El Hadji Malick Sow (Senegal) and Vladimir Tochilovsky (Ukraine). On 1 June 2014, Sètondji Roland Jean-Baptiste Adjovi (Benin) and José Antonio Guevara Bermúdez (Mexico) started their functions as members of the Working Group, replacing Mr. Sow and Mr. Garretón, respectively. On 1 August 2014, Seong-Phil Hong (Republic of Korea) started his functions as a member of the Working Group, replacing Ms. Ali.

3. During 2014, Mr. Andenas was the Chair-Rapporteur of the Working Group and Vladimir Tochilovsky its Vice-Chair. At the seventy-second session of the Working Group, Mr. Hong was elected as Chair-Rapporteur, Mr. Guevara Bermúdez as First Vice-Chair and Mr. Adjovi as Second Vice-Chair.

II. Activities of the Working Group in 2014

4. During the period 1 January to 31 December 2014, the Working Group held its sixty-ninth, seventieth and seventy-first sessions. It undertook an official mission to New Zealand, from 24 March to 7 April 2014, and two follow-up visits, one to Germany, from 12 to 14 November 2014 and one to Italy, from 7 to 9 July 2014 (see A/HRC/30/36/Add.2, 4 and 3, respectively).

5. On 24 March 2014, the Government of Nauru cancelled the visit of the Working Group scheduled to take place from 14 to 19 April 2014, owing to "unforeseen circumstances". The Government has not yet accepted the new visit dates proposed by the Working Group.

6. Pursuant to Human Rights Council resolution 20/16, the Working Group adopted at its seventy-second session the draft basic principles and guidelines on remedies and procedures on the right of anyone deprived of his or her liberty by arrest or detention to bring proceedings before court. The draft basic principles and guidelines are aimed at assisting Member States in fulfilling their obligation to avoid arbitrary deprivation of liberty, in compliance with international human rights law.

7. The Working Group submitted to the Human Rights Council at its twenty-seventh session a report in which it compiled international, regional and national legal frameworks on the right to challenge the lawfulness of detention before court (A/HRC/27/47). The report was based largely on the responses submitted by a wide range of stakeholders to a questionnaire sent by the Working Group, in which it requested details on the treatment of the right in the respective legal frameworks.

8. The Working Group is submitting to the Human Rights Council at its thirtieth session a separate report containing the draft principles and guidelines (A/HRC/30/37). Mr. Andenas served as the rapporteur for the draft basic principles and guidelines.

9. On 1 and 2 September 2014, the Working Group convened a global consultation in Geneva to bring together thematic and regional experts to elaborate on the scope and content of the right to court review of detention, and to allow stakeholders to contribute to the development of the draft basic principles and guidelines. Fifteen regional experts delivered presentations. Government representatives, bodies and agencies of the United Nations system, international and regional organizations, national human rights institutions, civil society organizations and academia participated actively in the event. The Working Group used the outcome of the consultation to revise its preliminary version of the draft basic principles and guidelines.

10. The Working Group continued to update its database (www.unwgaddatabase.org), which was launched in 2011 to facilitate free and public access to the Working Group's opinions on individual cases of detention. The database contains over 600 opinions, available in English, French and Spanish, that have been adopted since the establishment of the Working Group in 1991. The database serves as a practical research tool for victims, lawyers, academics and others preparing cases for submission to the Working Group.

11. At its seventieth session the Working Group decided to establish a task force, composed of Mr. Tochilovsky, Mr. Adjovi and the secretary of the Working Group, to work intersessionally to put forward suggestions for improvements to the Working Group's procedures and working methods. The task force identified a need to improve communication, both between the Working Group and the parties involved as well as within the Working Group. In order to improve the transparency and availability of information, the Working Group established an internal extranet page, in coordination with the Office of the United Nations High Commissioner for Human Rights (OHCHR), and updated the Working Group's public website. At its seventy-first session, the Working Group decided to amend its standard questionnaire for submitting cases in accordance with the regular communications procedure, in order to include questions related to due process and fair trial.

12. Mr. Tochilovsky represented the Working Group at a conference entitled "Challenges to security and human rights in the Arab region", which took place in Doha on 5 and 6 November 2014. Mr. Hong represented the Working Group at an expert consultation on the administration of justice through military tribunals, held in Geneva on 24 November 2014.

A. Handling of communications addressed to the Working Group during 2014

1. Communications transmitted to Governments

13. At its sixty-ninth, seventieth and seventy-first sessions, the Working Group adopted a total of 57 opinions concerning more than 422 persons in 30 countries (see the table below).

2. Opinions of the Working Group

14. Pursuant to its methods of work (A/HRC/16/47, annex, and Corr.1), the Working Group, in addressing its opinions to Governments, drew their attention to Commission on Human Rights resolutions 1997/50 and 2003/31 and Human Rights Council resolutions 6/4 and 24/7, requesting them to take account of the Working Group's opinions and, where

necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty and to inform the Working Group of the steps they had taken. On the expiry of a two-week deadline, the opinions were transmitted to the relevant sources.

Opinions adopted at the sixty-ninth, seventieth and seventy-first sessions of the Working Group

Opinion No.	*State*	*Government reply*	*Person(s) concerned*	*Opinion*
1/2014	Bahrain	Yes	Tagi Al-Maidan	Detention arbitrary, category III
2/2014	China	Yes	Chen Kegui	Detention arbitrary, category III
3/2014	China	Yes	Ilham Tohti	Detention arbitrary, categories II and III
4/2014	China	Yes	Ma Chunling	Detention arbitrary, categories II and V
5/2014	Iraq	Yes	Shawqi Ahmad Omar	Detention arbitrary, category III
6/2014	Myanmar	No	Brang Yung	Detention arbitrary, categories III and V
7/2014	Plurinational State of Bolivia	No	Jacob Ostreicher	Case filed (person released)
8/2014	China	Yes	Xing Shiku	Detention arbitrary, categories I and II
9/2014	Cuba	Yes	Iván Fernández Depestre	Detention arbitrary, category II
10/2014	Egypt	No	Mohamed Essayed Ali Rasslan, Mohamed Mohamed Abdo Abdullah, Ahmed Hussein Ali, Ahmed Mohamed Tohamy Motaz Ahmed Motwali, Mohamed Mohamed Abduh, Assayed Mohamed Ezzat Ahmed, Assayed Saber Ahmed Suleiman, Ahmed Hassan Fawaz Atta, Mohamed Abdel Hamid Abdel Fattah Abdel Hamid, Sayyed Ali Abdel Zaher, and Mahmoud Abdel Fattah Abbas	Detention arbitrary, categories II and III
11/2014	Yemen	No	Haytham Al Zaeetari	Detention arbitrary, categories II and III
12/2014	United Arab Emirates	No	Khalifa Rabia Najdi	Detention arbitrary, categories I, II and III
13/2014	Yemen	No	Mohammad Muthana Al Ammari	Detention arbitrary, categories II and III

Opinion No.	*State*	*Government reply*	*Person(s) concerned*	*Opinion*
14/2014	Saudi Arabia	No	Zakaria Mohamed Ali	Detention arbitrary, categories I, II and III
15/2014	Canada	No	Michael Mvogo	Detention arbitrary, category IV
16/2014	Democratic Republic of the Congo	No	Abedi Ngoy and Gervais Saidi	Detention arbitrary, category III
17/2014	Algeria	No	Djameleddine Laskri	Detention arbitrary, categories I and III
18/2014	Saudi Arabia	No	Tawfiq Ahmad Ali Al Sabary	Case filed (person released)
19/2014	Thailand	No	Muhamadanwar Hajiteh, also known as Muhamad Anwal or Anwar	Detention arbitrary, category III
20/2014	El Salvador	Yes	Aracely del Carmen Gutiérrez Mejía; Verónica Beatriz Hernández Mejía and Reyna Ada López Mulato	Detention arbitrary, category III; in the cases of Ms. Hernández and Ms. López Mulato, category I
21/2014	China	Yes	Wang Hanfei	Detention arbitrary, category II
22/2014	Bahrain	No	Jassim al-Hulaibi	Detention arbitrary, category III
23/2014	Mexico	No	Damián Gallardo Martínez	Detention arbitrary, categories I, II and III
24/2014	Myanmar	No	La Ring	Detention arbitrary, categories I, II, III and V
25/2014	Bahrain	Yes	A minor	Detention arbitrary, category III
26/2014	Bolivarian Republic of Venezuela	Yes	Leopoldo López Mendoza	Detention arbitrary, categories II and III
27/2014	Bahrain	Yes	Ali Salman	Detention arbitrary, category III
28/2014	Bolivia (Plurinational State of)	No	Mario Francisco Tadic Astorga	Detention arbitrary, categories I and III
29/2014	Bolivarian Republic of Venezuela	No	Juan Carlos Nieto Quintero	Detention arbitrary, categories I and III

Opinion No.	*State*	*Government reply*	*Person(s) concerned*	*Opinion*
30/2014	Bolivarian Republic of Venezuela	No	Daniel Omar Ceballos Morales	Detention arbitrary, categories II and III
31/2014	Myanmar	No	Kyaw Hla Aung	Detention arbitrary, categories II and III
32/2014	Saudi Arabia	No	Tahir Ali Abdi Jama	Detention arbitrary, categories I and III
33/2014	Burundi	No	Pierre-Claver Mbonimpa	Detention arbitrary, category II
34/2014	Bahrain	Yes	Mohammed Hassan Sedif and Abdul Aziz Moussa	Detention arbitrary, II and III; in the case of Mr. Moussa, detention arbitrary category II
35/2014	Egypt	No	Khaled Mohamed Hamza Abbas, Adel Mostafa Hamdan Qatamish, Ali Ezzedin Thabit, Zain El-Abidine Mahmoud and Tariq Ismail Ahmed	Detention arbitrary, category III
36/2014	Syrian Arab Republic	No	Ammar Tellawi	Detention arbitrary, categories II and III
37/2014	Bahrain	No	Ebrahim Abdulla al-Sharqi, Taleb Ali Mohammed and Ahmed Abdulla Ebrahim	Detention arbitrary, category III
38/2014	Cameroon	Yes	Paul Eric Kingue	Detention arbitrary, categories I and III
39/2014	Tunisia	No	Salem Lani, Abdeldelwaheb Thabti, Mabrouk Gasser, Elfakhem Elwichi, Bechir H'rabi, Monji Maiz, Ibrahim Thabti and Saïd Chibili.	Detention arbitrary, categories I, III and V
40/2014	Turkmenistan	No	Arslannazar Nazarov and Bairamklich Khadzhiorazov	Detention arbitrary, category III
41/2014	Thailand	No	Patiwat Saraiyaem	Detention arbitrary, category II
42/2014	Yemen	No	Tariq Saleh Saeed Abdullah Alamoodi	Detention arbitrary, categories I and III
43/2014	Israel	No	Ahmad Ishraq Rimawi	Detention arbitrary, category III

Opinion No.	*State*	*Government reply*	*Person(s) concerned*	*Opinion*
44/2014	Congo	No	Mbanza Judicaël, Kimangou Joseph, Miakamouna Nzingoula Sylvain, Bibila Gilbert, Mabiala Mpandzou Paul Marie, Tsiakala Valentin, Baboyi Antoine, Silaho René, Matimouna Mouyecket Euloge, Kialounga Pierre Placide, Tandou Jean Claude Davy, Ngoma Sylvain Privat, Banangouna Dominique Mesmin and Loudhet Moussa Landry	Detention arbitrary, categories I, II and III
45/2014	Togo	Yes	Kpatcha Gnassingbe, Ougbakiti Seïdou, Essozimma (Esso) Gnassingbe, Abi Atti, Soudou Tchinguilou, Kokou Tchaa Dontema and Efoé Sassouvi Sassou	Detention arbitrary, category III
46/2014	Cameroon	No	Christophe Désiré Bengono	Detention arbitrary, categories I and III
47/2014	Yemen	No	Nadeer Saleh Mohseen Saleh Al Yafei	Detention arbitrary, category III
48/2014	Lebanon	No	Tarek Mostafa Marei and Abdel Karim Al Mustafa	Detention arbitrary, categories I and III
49/2014	China	No	Jingling Tang, Qingying Wang and Xinting Yuan	Detention arbitrary, category III
50/2014	United States of America	Yes The Government of Cuba replied after the adoption of the opinion.	Mustafa al Hawsawi	Detention arbitrary, categories I, III and V
51/2014	Bolivarian Republic of Venezuela	Yes	Maikel Giovanni Rondón Romero and 316 other persons	Detention arbitrary, category III
52/2014	Australia/ Papua New Guinea	No	Reza Raeesi	Detention arbitrary, category IV
53/2014	Oman	Yes	Talib Ahmad Al Mamari	Detention arbitrary, categories II and III
54/2014	Oman	Yes	Sagr Mohamed Al Balloushi, Said Hamid Al Meqbaly, Tallal Moubarak Al Meqbaly, Khamis Kassif Al Mamari, Abdurrahman Rashed Al Ghafili, Abdullah Saleh Al Mamari, Abdullah Hassan Al Balloushi, Badr Mohamed Al Mamari and Abdulmajid Sarhan Al Ghafili	Detention arbitrary, category II
55/2014	China	Yes	Ziyuan Ren	Case filed

Opinion No.	*State*	*Government reply*	*Person(s) concerned*	*Opinion*
56/2014	United Arab Emirates	Yes	Saleh Farag Dhaifullah, Ibrahim Abdulaziz Ibrahim Ahmad, Mohamed Adulmoneim Mohamed Mahmoud, Ahmad Mahmoud Taha, Medhat Mohamed Mustafa Al Ajez, Ali Ahmad Ibrahim Sonbol, Mohamed Mahmoud Ali Shahdah, Abdullah Mohamed Ibrahim Zaza, Salah Mohamed Rezq Al Mashad, Abdullah Al Arabi Abdullah Omar Ibrahim, Ahmad Gafar, Abdulmoneim Ali Al Said Atyea and Mourad Mohamed Hamed Othman	Detention arbitrary, category III
57/2014	Lebanon	No	Mohammed Ali Najem and 71 other persons	Detention arbitrary, categories I and III

3. Reactions from Governments concerning previous opinions

15. By note verbale dated 19 February 2014, the Permanent Mission of Mexico to the United Nations Office at Geneva transmitted the additional information requested by the Working Group in its opinion No. 58/2013 (Mexico). According to the information provided, the judicial process is still at the preliminary investigation stage; Marco Antonio de Santiago Ríos was arrested in flagrant delict; and during his apprehension, the police officers fully observed the principles of legality, lawfulness, objectivity and efficiency and acted with professionalism, respecting the rights of the person captured.

16. By letter dated 28 February 2014, the Government of Sri Lanka submitted a late response regarding the case of Varnakulasingham Arulanandam (opinion No. 48/2013 (Sri Lanka)). In its letter, the Government provided information on the reasons and circumstances of Mr. Arulanandam's arrest and detention and on the ongoing court proceedings against him. It stated, inter alia, that Mr. Arulanandam had been promptly informed of the charges against him and brought before the magistrate every month since his arrest.

17. By letter dated 26 December 2013, the Government of Libya informed the Working Group that opinion 41/2013 (Libya) contained a number of errors, and refuted that the detention of Saif al-Islam Gaddafi was arbitrary. The Government stated, inter alia, that Mr. Gaddafi had been investigated by the public prosecutor and charged with a number of crimes under domestic legislation, and that the Libyan authorities were willing and capable of trying Mr. Gaddafi, as evidenced by the case of Abdullah al-Senussi, in which the International Criminal Court had determined that domestic authorities were willing and genuinely able to investigate the case.

18. Concerning opinion 38/2013 (Cameroon) on the detention of Michel Thierry Atangana Abega, the Government of Cameroon, by letter dated 31 January 2014, noted with surprise that it had not been granted a deadline extension of 60 days for the submission of its response. The State further argued that the Working Group should give proper space for the simple, yet fundamental, principle of adversarial debate. It informed the Working Group that Mr. Atangana was in detention for embezzlement of public funds, and that the detention was not politically motivated. The Government expressed regret at the

precipitation surrounding the examination of the case, and it deplored the overall tone of the opinion.

19. By note verbale dated 12 March 2014, the Permanent Mission of Paraguay to the United Nations Office at Geneva transmitted the additional information requested by the Working Group in paragraph 46 of its opinion No. 31/2013 (Paraguay) on the detention of Lucía Agüero Romero and others. According to the information provided, the preliminary investigation into the case concluded on 9 October 2013 and the judicial process is due to enter the oral phase (hearings); 12 persons have been formally charged and accused and 3 persons have been released without charges. It is expected that five of the accused will continue to be held in pretrial detention, six will be held under house arrest and one will await the process at liberty. The Government also provided information concerning the medical attention provided to the detainees who were on a hunger strike.

20. By letter dated 25 November 2013, the Government of Tunisia provided a late response on the case of Jabeur Mejri (opinion No. 29/2013 (Tunisia)).

21. By letter received on 13 December 2013, the Government of the Islamic Republic of Iran provided a late response on the case of Amir Nema Hekmati (opinion No. 28/2013 (Islamic Republic of Iran)). According to the Government, Mr. Hekmati was tried by Branch 15 of the Revolutionary Court of Tehran on charges of cooperation with the Government of the United States of America and its Central Intelligence Agency (the CIA), to work against the system of the Islamic Republic of Iran. The Court found Mr. Hekmati guilty of the charges and sentenced him to death. His counsel appealed the judgement and Mr. Hekmati's sentence was subsequently reduced to 10 years of imprisonment. His counsel appealed the reduced sentence, but the appellate court upheld the sentence.

22. By letter dated 27 January 2014, the Government of Turkmenistan sent additional information on the case of Gulgeldy Annaniyazov (opinion No. 22/2013 (Turkmenistan)). The Government informed the Working Group that Mr. Annaiyazov had stolen a passport of another resident of Ashgabat City in July 2002 for the purpose of illegally crossing the border to travel to the Russian Federation via Kazakhstan. When he returned to Turkmenistan in June 2008, he crossed the border without proper documents and permits. The Government considered that the Working Group's reasoning was incorrect, as Mr. Annaiyazov's case had been properly investigated and his punishment had been determined in accordance with the law.

23. By letter dated 1 July 2014, the Government of Iraq provided a late response on the case of Shawqi Ahmad Omar, explaining the judicial processes leading to Mr. Omar's arrest and detention (opinion No. 5/2014 (Iraq)). On 9 October 2014, the Government transmitted a response to OHCHR and the Committee on Enforced Disappearances concerning the case of Mr. Omar (opinion No. 5/2014 (Iraq)), stating that the case could not be considered one of enforced disappearance, because Mr. Omar's location of detention had been identified, as mentioned in the previous communications provided by the Iraqi authorities.

24. By letter dated 14 July 2014, the Government of the United Arab Emirates provided a late response on the case of Khalifa Rabia Najdi (opinion No. 12/2014 (United Arab Emirates)), stating that Mr. Nadji had been arrested for "committing a crime in accordance with Article 180 paragraph 2 of the Criminal Law, by joining an illegal secret organization opposing the fundamental principles underlying the ruling system and whose aim is to seize power".

25. By letter dated 13 August 2014, the Government of Jordan provided a late response on the case of Hisham al Heysah and others (opinion No. 53/2013 (Jordan)).

26. By letter dated 2 September 2014, the Government of the Plurinational State of Bolivia sent a late response regarding the case of Mario Francisco Tadic Astorga (opinion No. 28/2014 (Plurinational State of Bolivia)). In its response, the Government denied all the allegations put forward by the source, including the allegations of torture, and that Mr. Astorga had not had access to legal counsel.

27. By letter dated 30 September 2014, the Government of Bahrain provided a late response regarding the case of Jassim al-Hulaibi (opinion No. 22/2014 (Bahrain)).

28. By note verbale dated 20 February 2015, the Government of Thailand submitted a late response regarding the case of Patiwat Saraiyaem (opinion No. 41/2014 (Thailand)). According to the Government, the arrest and detention of Mr. Saraiyaem was in full compliance with international norms, including relevant provisions of the International Covenant on Civil and Political Rights. Mr. Saraiyaem had pleaded guilty on the lese-majesty charge on 29 December 2014. If found guilty, he could seek a royal pardon from the King, which had been granted in most lese-majesty cases.

29. Concerning opinion No. 50/2014 (United States of America and Cuba), the Government of Cuba pointed out, in a note verbale dated 16 March 2015, that it could not do anything to prevent the use by the Government of the United States of the Guantanamo Bay Naval Base. Although Cuba has sovereignty over its entire national territory, the United States exercises jurisdiction over the territory of the Guantanamo Bay Naval Base owing to its illegal occupation. The reply from the Government of Cuba regarding opinion No. 50/2014 is reproduced as received in the annex to the present report.

30. The Government of Cuba expressed deep concern over the legal limbo that supported ongoing violations by the Government of the United States of human rights of inmates in the detention centre illegally established at the Guantanamo Bay Naval Base, including torture and deaths in custody.

4. Release of subjects of the Working Group's opinions

31. The Working Group received information from Governments and sources on the release of the following subjects of its opinions:

- Gao Zhisheng (opinion No. 26/2010 (China)) was released on 7 August 2014.
- Issam Mahamed Tahar al Barquaoui al Uteibi (opinions No. 60/2011 (Jordan) and No. 18/2007 (Jordan)) was released on 16 June 2014, after serving his five-year sentence.
- Do Thi Minh Hanh (opinion No. 42/2012 (Viet Nam)), a labour activist, was released on 26 June 2014.
- On 19 June 2014, magistrates in Istanbul ordered the release of 230 military officers sentenced for plotting to overthrow the Government in the "Sledgehammer" trial, following a Constitutional Court ruling on 18 June 2014 that their rights to a fair trial had been violated (opinion No. 6/2013 (Turkey)).
- Zakaria Mohamed Ali was released on 17 March 2014 and expelled to Somalia (opinion No. 14/2014 (Saudi Arabia)).
- Michael Thierry Atangana (opinion No. 38/2013 (Cameroon)) was pardoned under a presidential decree on 24 February 2014, a few days after the opinion of the Working Group had been made public. Mr. Atangana has regularly updated the Working Group on the enforcement of its three recommendations (release, accountability and reparation).

- Yorm Bopha, the subject of opinion No. 24/2013 (Cambodia), was released on bail on 22 November 2013. She was arrested again on 21 January 2014 along with other human rights activists for protesting against the imprisonment of 23 persons who had participated in a demonstration by garment factory workers. They were detained for several hours and released after they signed a statement pledging not to participate in illegal activities or protests in the future.

- Nguyen Tien Trung, one of the individuals concerned in opinion No. 27/2012 (Viet Nam), is a blogger who was convicted in January 2010 to seven years of imprisonment for alleged subversion against the State. According to the information received, Mr. Trung was released on 12 April 2014 on the basis of his good behaviour, after having served four years in imprisonment.

- Cu Huy Ha Vu, the subject of opinion No. 24/2011 (Viet Nam), is a prominent human rights lawyer who was sentenced to imprisonment for seven years in April 2011 for allegedly spreading anti-government propaganda. According to the information received, Mr. Vu was released on 5 April 2014 after having served three years in prison, and has left for another country.

- On 30 September 2014, the relevant source informed the Working Group that human rights defender Pierre-Claver Mbonimpa (opinion No. 33/2014 (Burundi)) was conditionally released from prison on 29 September 2014 on grounds of ill health. The court placed travel restrictions on him and he remains in hospital.

- On 18 October 2014, the relevant source informed the Working Group that La Ring and Kyaw Hla Aung, subjects of opinions No. 24/2014 (Myanmar) and No. 31/2014 (Myanmar), respectively, had been released from prison on 7 October 2014.

- In its opinion 12/2013 (Bahrain), the Working Group found that the detention of Nabeel Abdulrasool Rajab, a prominent Bahraini human rights defender, was arbitrary. Upon completion of his prison sentence, he was released on 24 May 2014, but the Court barred him from leaving the country. He is still facing the charge of "insulting a public institution and the army" via Twitter, pursuant to article 216 of the Bahraini Penal Code, an offence punishable by up to six years of imprisonment.

- By note verbale dated 27 November 2014, the Government of Argentina informed the Working Group that the High Court of Córdoba had ordered the end of the preventive detention of Guillermo Luis Lucas, which was subject of opinion No. 20/2013 (Argentina), and had held all the charges brought against him to be without effect.

- By note verbale of 6 January 2015, the Government of Cuba reported that Gerardo Hernández Nordelo, Ramón Labaniño Salazar and Antonio Herreros Rodríguez, held in United States federal prisons for 16 years, had been released from detention and had arrived in Havana on 17 September 2014. The Government of Cuba expressed gratitude to the Working Group for its efforts in finding a solution to this case. The Working Group had declared arbitrary the detention of these three persons, as well as the detention of Fernando González Llort and René González Schweret, in its opinion No. 19/2005 (United States of America).

- On 6 January 2015, the relevant source informed the Working Group that Khaled El-Kazaz, one of the subjects of opinion No. 39/2013 (Egypt), had been released. The charges brought against him had been dropped and his case had been closed.

32. The Working Group expresses its gratitude to those Governments that undertook positive actions and released detainees that were subjects of its opinions. However, it also expresses regret that Member States have not fully cooperated in enforcing the opinions.

5. Requests for review of opinions adopted

33. The Working Group considered the requests made by the Governments concerned for review of the following opinions: No. 39/2013 (Egypt) concerning Mohamed Mohamed Morsi Eissa El-Ayyat and others; No. 15/2014 (Canada), concerning Michael Mvogo, and No. 10/2014 (Egypt), concerning Mohamed Essayed Ali Rasslan and others.

34. After carefully and closely examining the requests for review, the Working Group decided to maintain its opinions, in accordance with paragraph 21 of its methods of work.

6. Reprisal against a subject of an opinion of the Working Group

35. The Working Group expresses its concern regarding the continued detention under house arrest of María Lourdes Afiuni Mora, the subject of its opinion No. 20/2010 (Bolivarian Republic of Venezuela), who was arrested in 2009 for ordering the conditional release of Eligio Cedeño, the subject of the Working Group's opinion No. 10/2009 (Bolivarian Republic of Venezuela). The Working Group considers the detention of Ms. Afiuni as a measure of reprisal. It reiterates its calls upon the Government of the Bolivarian Republic of Venezuela to immediately release Ms. Afiuni and to provide her with effective and adequate reparations.

7. Urgent appeals

36. During the period from 1 January 2014 to 31 December 2014, the Working Group sent 136 urgent appeals to 48 Governments concerning 435 individuals. Urgent appeals were sent to the following countries:

> Bahrain (11); Burundi (1); Cambodia (2); China (11); Congo (1); Cuba (1); Cyprus (1); Egypt (9); Eritrea (2); Ethiopia (6); Fiji (1); France (1); Gambia (1); Iran (Islamic Republic of) (16); Iraq (1); Israel (2); Jordan (1); Kazakhstan (1); Kuwait (1); Kyrgyzstan (1); Mexico (1); Morocco (4); Myanmar (3); Nepal (1); Niger (1); Nigeria (1); Oman (2); Pakistan (2); Panama (1); Qatar (1); Republic of Moldova (1); Rwanda (1); Saudi Arabia (10); Sri Lanka (1); Sudan (3); Swaziland (1); Syrian Arab Republic (3); Tajikistan (2); Thailand (3); Tunisia (1); Turkey (1); United Arab Emirates (4); United Kingdom of Great Britain and Northern Ireland (2); United States of America (1); Uzbekistan (1); Venezuela (Bolivarian Republic of) (3); Viet Nam (5); Yemen (4).

A copy of one joint urgent appeal was sent to the United Nations Resident Coordinator in the Republic of Moldova, and one urgent appeal was transmitted to the African Union.

37. The full text of the urgent appeals can be consulted in the joint reports on communications.[1]

38. In conformity with paragraphs 22 to 24 of its methods of work, the Working Group, without prejudging whether a detention was arbitrary, drew the attention of each of the Governments concerned to the specific case as reported, and appealed to them to take the measures necessary to ensure that the detained persons' rights to life and to physical integrity were respected.

39. When an appeal made reference to the critical state of health of certain persons or to particular circumstances, such as failure to execute a court order for release, the Working Group requested the Government concerned to take all measures necessary to have the

[1] For communications reports of the special procedures, see www.ohchr.org/EN/HRBodies/SP/Pages/CommunicationsreportsSP.aspx.

person concerned released. In accordance with Human Rights Council resolution 5/2, the Working Group integrated into its methods of work the prescriptions of the Code of Conduct for Special Procedures Mandate-holders of the Human Rights Council relating to urgent appeals and has since applied them.

40. During the period under review, the Working Group also sent six letters of allegation to Australia, Iraq, Libya, Nigeria, the Syrian Arab Republic and Uganda.

41. The Working Group wishes to thank those Governments that heeded its appeals and that took steps to provide it with information on the situation of the persons concerned, especially the Governments that released those persons. In other cases, the Working Group was assured that the detainees concerned would receive fair trial guarantees.

B. Country visits

1. Requests for visits

42. The Working Group has been invited to visit Argentina (follow-up visit), Azerbaijan, Burkina Faso, India, Japan, Libya, Malta (follow-up visit), Nauru, Spain and the United States of America, as well as the State of Palestine.

43. As indicated in paragraph 5 above, on 24 March 2014 the Government of Nauru cancelled the scheduled visit of the Working Group, and has yet not accepted the new proposed dates for the visit.

44. The Working Group has also asked to visit Algeria, the Democratic People's Republic of Korea, Egypt, Ethiopia, Fiji, Guatemala, Guinea-Bissau, Kazakhstan, Kenya, Myanmar, Papua New Guinea, the Philippines, the Republic of Korea, the Russian Federation, Rwanda, Saudi Arabia, Sierra Leone, Singapore, the Syrian Arab Republic, Thailand, Turkmenistan, Uganda, Uzbekistan and the Bolivarian Republic of Venezuela. The Working Group has also sent requests for follow-up visits to Bahrain, China, Indonesia, Malaysia, Mexico Nicaragua (limited to Bluefields) and Viet Nam.

2. Follow-up to country visits

45. In accordance with its methods of work, the Working Group decided in 1998 to address follow-up letters to the Governments of countries it had visited, requesting information on such initiatives as the authorities might have taken to give effect to the relevant recommendations adopted by the Working Group contained in the reports on its country visits (see E/CN.4/1999/63, para. 36).

46. In 2014, the Working Group requested information from the Government of El Salvador, which it had visited in 2012. The Government submitted the requested information on 19 May 2015, that is, after the adoption of the present report. It will be considered at the next session of the Working Group and summarized in the next annual report.

C. Consideration of the title of the Working Group

47. In its resolution 1991/42 establishing the Working Group on Arbitrary Detention, the Commission on Human Rights did not define the term "detention".

48. The international human rights instruments that protect the right to personal liberty guarantee that no one shall be arbitrarily deprived of his or her liberty. The relevant international instruments do not always use the same terminology to refer to deprivation of

liberty: they may use "arrest", "apprehension", "detention", "incarceration", "prison", "reclusion", "custody", "remand" and other terms.

49. These different interpretations of the term "detention" were resolved by the adoption of Commission on Human Rights resolution 1997/50, in which the Commission opted for the term "deprivation of liberty". However, this change of terminology has not been reflected in the title of the Working Group, which often leads to misinterpretation of the mandate of the Working Group.

50. The Working Group requests the Human Rights Council to consider bringing the name of the Working Group into line with resolution 1991/42 by revising it to the Working Group on Arbitrary Deprivation of Liberty.

D. Follow-up to the joint study on secret detention

51. The Working Group has continued to consider how it can contribute to the follow-up of the joint study on secret detention (A/HRC/13/42) within its mandate. The Working Group will also follow up on its own previous reports and opinions on secret detention and anti-terrorism measures, taking account of subsequent developments, including the length of detention of individuals.

E. Prevention of imminent arbitrary deprivation of liberty

52. The Working Group has continued its deliberations on the possibility of transmitting cases to Governments in situations where an individual is at risk of being arrested pursuant to an arrest warrant or detention order issued against him or her and where the resulting deprivation of liberty is likely to be arbitrary in nature.

53. Under its methods of work, the Working Group has no mechanism to address situations where there is sufficiently reliable information that the execution of an order of arrest will inevitably result in arbitrary deprivation of liberty. In effect, the Working Group currently has to wait until the arrest warrant is executed and the person is arbitrarily deprived of his or her liberty.

54. However, a preventive mechanism might be applicable in situations where an individual is to be arrested solely because he or she has exercised the fundamental rights or freedoms guaranteed by international human rights law. Similarly, it could apply in situations where an imminent arrest would clearly constitute a violation of international law prohibiting discrimination based on national or ethnic origin, religion, political or other opinion, gender, sexual orientation or other status, and which might result in the equality of human rights being ignored.

55. If such a preventive mechanism was available to the Working Group, section V of its methods of work on the urgent action procedure would apply mutatis mutandis to the consideration of communications on imminent arbitrary deprivation of liberty.

56. As regards the action on such communications, two options can be considered: (a) if the Working Group considered that the imminent detention was not of an arbitrary nature, it would render an opinion to that effect, and such an opinion would not prejudge any further consideration by the Working Group of a communication regarding the case on other grounds provided for in the methods of work; and (b) if the Working Group considered that the arbitrary nature of the imminent detention had been established, it would render an opinion to that effect and make recommendations to the Government.

III. Thematic issues

A. Detention in the context of drug control

1. Drug policies and arbitrary detention

57. In the light of communications received and findings resulting from country visits, the Working Group notes with concern the increasing, and in some cases, systematic, instances of arbitrary detention as a consequence of drug control laws and policies.[2] The Working Group believes it is topical and necessary to further examine the relationship between drug control and arbitrary detention.

58. Arbitrary detention for drug offences or use can occur across criminal and administrative settings, particularly when procedural safeguards are absent.[3] The Working Group attaches particular importance to the fact that criminal and administrative detention for drug control purposes has a disproportionate impact on vulnerable groups, such as women, children, minority groups and people who use drugs.[4]

59. The Working Group has expressed its concern about the frequent use of various forms of administrative detention that entail restrictions on fundamental rights, and considers to be worthy of attention detention imposed as a means of controlling people who use drugs, especially when such detentions are framed as health interventions. States have incorporated such detention into national legislation based on perceived notions that drug use in itself endangers the life of the person who uses, as well as the lives of others.[5] This translates into administrative drug detention justified on the basis of health grounds, which can lead to involuntary commitment or compulsory drug treatment that is unsupported by either international drug control conventions or international human rights law.[6] The Working Group has noted as particularly worrisome instances of arbitrary detention in Brazil[7] and East Asia[8] in the context of the compulsory confinement of people who are

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[2] See, for example, Julie Hannah and Nahir de la Silva, "Human rights, drug control and the UN special procedures: preventing arbitrary detention through the promotion of human rights in drug control" (International Centre on Human Rights and Drug Policy, 2015). Available from www.hr-dp.org/files/2015/02/02/WGAD.FINAL_.30_Jan_2015_.pdf. Of the 64 reports of the Working Group, including annual and country reports, 35 have made explicit reference to drug-related practices.

[3] See, for example, E/CN.4/1998/44/Add.2, paras. 81 and 97–99 and A/HRC/27/48/Add.3, paras. 111–119.

[4] See, for example A/HRC/16/47/Add.3, A/HRC/4/40/Add.3, A/HRC/27/48/Add.3, E/CN.4/2004/3/Add.3, A/HRC/10/21/Add.3, E/CN.4/2006/7 and A/HRC/27/48.

[5] See, for example, A/HRC/4/40/Add.5, para. 92, E/CN.4/1998/44/Add.2, para. 81, and A/HRC/27/48/Add.3, para. 111.

[6] Nowhere in the three international drug control conventions (Single Convention on Narcotic Drugs, 1961; Convention on Psychotropic Substances, 1971; United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988) is compulsory treatment or involuntary commitment for drug use required, and throughout the treaties penal responses and the use of treatment is subject to international and domestic law. For further discussion, see Hannah and de la Silva, "Human rights, drug control".

[7] In the State of São Paulo, compulsory confinement of addicts of crack cocaine and other drugs has been introduced in an effort to bring users on the street into detention. At the time of the Working Group's visit to São Paulo, 5,335 persons were detained in compulsory confinement. On 4 January 2013, the Governor of the State of São Paulo announced a new regional plan to fight drug consumption whereby crack users would be put in compulsory psychiatric confinement. To manage confinement, a standing court was established. In a police operation in a neighborhood of São Paulo, more than 2,000 crack users were arrested. (See A/HRC/27/48/Add.3, paras. 113–114.)

suspected of using drugs. It has been established that detention and forced labour are not scientifically valid means to treat drug dependence.[9] Compulsory detention regimes for purposes of drug "rehabilitation" through confinement or forced labour are contrary to scientific evidence and inherently arbitrary.[10]

60. Drug consumption or dependence is not sufficient justification for detention. Involuntary confinement of those who use or are suspected of using drugs should be avoided.[11]

61. The Working Group is also concerned about the use of criminal detention as a measure of drug control following charges for drug use, possession, production and trafficking. A variety of regional and international human rights instruments establish legal standards for detention based on criminal grounds, including minimum procedural guarantees.[12] These standards apply equally in cases of criminal detention for drug-related offences. Criminal laws and penal measures pursued under the existing punitive system of international drug control raise important questions of legality, proportionality, necessity and appropriateness.[13]

62. The Working Group has determined that pretrial detention regimes, including "*arraigo*" or other forms of detention to investigate, as well as bail systems, diminish a person's ability to challenge his or her detention; affect the presumption of innocence; and overwhelm the justice system. Guarantees of equal protection before the law and procedural rights to access to justice, including the exceptionality of pretrial detentions, as well as guarantees of promptness for judicial review and court hearings to determine criminal responsibility, must be ensured, including when individuals are detained for drug-related

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[8] There are five re-education through labour centres in Shanghai, including one for women, one for drug addicts, and three others for men. In cases of drug abuse, if it is a first offence, the person will be sent to a rehabilitation centre. In cases of repeated drug abuse, he or she may be sent to a re-education centre. Twenty per cent of cases are for drug-related offences (see E/CN.4/1998/44/Add.2, para. 85). See also the joint statement of 12 specialized agencies and other organizations of the United Nations system, available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11941&LangID=E; J.J. Amon and others, "Compulsory drug detention in East and Southeast Asia: evolving government, UN and donor responses", *International Journal of Drug Policy*, vol. 25, No. 1, pp. 13–20. In a published position on compulsory detention centres in East Asia and Pacific, available from www.unicef.org/eapro/media_18366.html, the United Nations Children's Fund expressed concern about "the use of compulsory detention centres in some countries in the East Asia and Pacific region where children, many of whom have been exploited in the sex trade, living on the streets, or detained for drug abuse, are being held".

[9] See United Nations Office on Drugs and Crime and World Health Organization, "Principles of drug dependence treatment", discussion paper (2008), p. 15. This is consistent with the position of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (see A/HRC/22/53, paras. 40–44).

[10] See United Nations Office on Drugs and Crime and World Health Organization, "Principles of drug dependence", p. 15.

[11] See E/CN.4/2004/3, paras. 74 and 87; Human Rights Committee, general comment No. 35 (2014) on liberty and security of person, para. 15; and European Court of Human Rights, *Witold Litwa v. Poland*, application No. 26629/95, judgement of 4 April 2000, paras. 77–80.

[12] African Charter on Human and Peoples' Rights, American Convention on Human Rights, Convention for the Protection of Human Rights and Fundamental Freedoms, International Covenant on Civil and Political Rights, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

[13] Rodrigo Uprimny Yepes, Diana Esther Guzmán and Jorge Parra Norato, "Addicted to punishment: the disproportionality of drug laws in Latin America", Dejusticia Working Paper 1.

reasons. As with any form of detention, such individuals must have judicial means to challenge the detention.[14] The Working Group has noted in particular that ongoing periodic judicial reviews are necessary to avoid prolonged detentions.[15]

B. Peaceful protests and arbitrary detention

63. The Working Group has received information and communications from different parts of the world on the increase of detentions of persons in the context of peaceful protests that could be considered as arbitrary in conformity with the Working Group's methods of work. Therefore, the Working Group will consider this matter as a topic in its work for 2017 in coordination with other special procedures of the Human Rights Council, the regional human rights institutions and other relevant stakeholders.

C. Remedies for arbitrary detention

64. The duty to comply with international law rests on everyone, including domestic authorities and private individuals. International and domestic law must provide remedies to make international law effective. States are under a positive obligation to provide an effective remedy for violations of international human rights law. The remedy for arbitrary detention will regularly be immediate release. In most cases, including those where release is not a remedy, the individual has a right to compensation. This right is firmly grounded in widespread international practice[16] and on the *opinio juris* of States; it is also included in a wide range of international instruments. It is found in the domestic law of almost all States, and breaches are denounced. The right constitutes a general principle of international law, based both in domestic law and its application across sectors of international law and treaty regimes.[17] Domestic law, whether constitutional or based on legislation or case law, has a particular role in the field of human rights law where the duties are primarily those of States to individuals. Domestic law is scrutinized in the Human Rights Council and its various mechanisms; indeed, many of those mechanisms have as their main aim the review of domestic law and practice. This produces much evidence of State practice and *opinio juris*. In addition, declarations and other statements made by States about their own law and its compliance with international law and further reaching human rights standards, and comments and denunciations of other States, serve as additional sources of *opinio juris*.

65. Domestic courts have a particular role in granting tort remedies (*responsabilité administrative et constitutionnelle*). Domestic law cannot erect barriers in the form of immunities, jurisdictional limitations, procedural hurdles or defences based on an Act of State doctrine that would limit the effectiveness of international law. One basis for jurisdiction is the exercise of control over individuals, and under international law it exists whenever an act attributable in the widest sense to a State has an adverse effect on anyone anywhere in the world. Article 8 of the Universal Declaration of Human Rights provides that everyone has the right to an effective remedy by the competent national tribunals for

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[14] Working Group on Arbitrary Detention, deliberation No. 4.

[15] See A/HRC/27/48/Add.3, paras. 111–119.

[16] See International Court of Justice, *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo), Compensation, Judgment, I.C.J. Reports 2012*, p. 324, *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo), Merits, Judgment, I.C.J. Reports 2010*, p. 639 and *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo), Preliminary Objections, Judgment, I.C.J. Reports 2007*, p. 582.

[17] *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal), Judgment, I.C.J. Reports 2012*, p. 422.

acts violating the fundamental rights granted him by the constitution or by law. Article 9 (5) of the International Covenant on Civil and Political Rights refers to an enforceable right to compensation for unlawful arrest and detention, and article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment provides that each State party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible, and that in the event of the death of the victim as a result of an act of torture, his dependents shall be entitled to compensation.

66. The duty to provide such redress is confirmed as customary international law in the constant jurisprudence of the Working Group. The Working Group points out that the arguments raised and doctrines offered in defence against remedies have to date been only too effective. In terms of actual outcomes, international courts and tribunals and domestic courts have not provided effective remedies. It is contrary to the rule of law and the requirements of an effective international legal order to accept new restrictions that effectively bar remedies in domestic courts, since, under the international law principles of subsidiarity and complementary, the domestic legal orders have the primary responsibility to provide remedies.

67. The international law obligation to provide remedies is fulfilled primarily through domestic law. Domestic authorities and States have an obligation to apply tort law in compliance with international law, which provides minimum standards. The emerging jurisprudence of international courts[18] and United Nations human rights bodies provides important sources of law or of declarations of the law.

IV. Conclusions

68. **The Working Group welcomes the cooperation given by States in the fulfilment of its mandate, in particular with regard to the responses from Governments concerning cases brought to their attention under the Working Group's regular procedure. During 2014, the Working Group adopted 57 opinions concerning 422 persons in 30 countries. It also sent 136 urgent appeals to 48 Governments concerning 435 persons.**

69. **The Working Group welcomes the invitations extended to it to pay official visits to countries. In 2014 it conducted an official visit to New Zealand, as well as follow-up visits to Italy and to Germany. The Working Group has received invitations from the Governments of Argentina (follow-up visit), Azerbaijan, Burkina Faso, India, Japan, Libya, Malta (follow-up visit), Nauru, Spain and the United States of America, as well as from the Government of the State of Palestine. It has also requested to be invited to an additional 35 countries.**

70. **The Working Group reiterates that timely responses to its letters of allegations under its regular procedure with full disclosure from Member States furthers the cause of objectivity in rendering the Working Group's opinions. The Working Group regrets that, in some cases, Governments do not provide responses, limit their replies to general information, merely affirm the non-existence of arbitrary detention in the**

[18] See, for example, the International Court of Justice in *Diallo* (Damages), the judgement of the International Criminal Court in *The Prosecutor v. Lubanga Dyilo* (2012) and the jurisprudence of the United Nations treaty bodies, in particular the Human Rights Committee and the Committee against Torture, as well as reports by special procedures mandate holders.

country or refer to the constitutional norms preventing arbitrary detention from occurring, without making direct references to the specific allegations transmitted.

71. In its deliberation No. 9 concerning the definition and scope of arbitrary deprivation of liberty under customary international law (see A/HRC/22/44, sect. III), the Working Group restated its constant jurisprudence on the prohibition of all forms of arbitrary deprivation of liberty, and demonstrated that it is general practice accepted as law, constituting customary international law and a peremptory norm (*jus cogens*).

72. The prohibition of arbitrary deprivation of liberty applies without territorial limitations, and to the duties of States where they have effective control and for acts by their agents abroad. International law does not accept Act of State limitations on human rights obligations. In the interactive dialogue at the twenty-second session of the Human Rights Council, States gave general support for the conclusions in the deliberation.

73. In its resolution 20/16, the Human Rights Council encouraged all States to respect and promote the right of anyone deprived of his or her liberty by arrest or detention to bring proceedings before court, in order that the court may decide without delay on the lawfulness of his or her detention and order his or her release if the detention was not lawful, in accordance with their international obligations. In a separate report (A/HRC/30/37), the Working Group is submitting to the Human Rights Council the draft basic principles and guidelines on remedies and procedures relating to that right, adopted by the Working Group at its seventy-second session.

74. In the light of communications received and findings resulting from country visits, the Working Group notes with concern the increasing instances of arbitrary detention as a consequence of drug control laws and policies. Compulsory detention regimes for the purposes of drug "rehabilitation" through confinement or forced labour are contrary to scientific evidence and inherently arbitrary.

75. Criminal laws and penal measures pursued under the existing punitive system of international drug control raise important questions of legality, proportionality, necessity and appropriateness.

76. The Working Group has received relevant information and communications on an increase of detentions in the context of peaceful protests. It intends to consider this matter as a topic in its work for the year 2017.

77. States are under a positive obligation to provide an effective remedy for violations of international human rights law. In most cases, the individual has a right to compensation. That right constitutes a general principle of international law.

78. The international law obligation to provide remedies is fulfilled primarily through domestic law. Domestic courts have a particular role in granting tort remedies, and domestic law cannot erect barriers that would limit the effectiveness of international law.

V. Recommendations

79. The Working Group on Arbitrary Detention recommends that States:

(a) Enforce and protect the right to liberty of every person under customary international law;

(b) **Ensure that the guarantees available against arbitrary arrest and detention are extended to all forms of deprivation of liberty, including house arrest; re-education through labour; prolonged periods of curfew; detention of migrants and asylum seekers; protective custody; detention for rehabilitation or treatment; and detention in transit areas and at border control checkpoints;**

(c) **Ensure that persons are not held in pretrial detention for periods longer than those prescribed by law, and that they are promptly brought before a judge;**

(d) **Remedy arbitrary detention, mainly by immediate release and compensation as required by international human rights conventions and customary international law, and assist the Working Group in the follow-up to its opinions in individual cases.**

80. **All measures of detention should be justified, adequate, necessary and proportional to the aim sought.**

81. **All persons subjected to a measure of detention should benefit at all stages from access to a lawyer of her or his choice and to effective legal assistance and representation.**

82. **All detainees should benefit from all minimum procedural guarantees, including the principle of equality of arms, the provision of adequate time and facilities for the preparation of the defence, proper access to evidence and guarantees against self-incrimination.**

83. **The Working Group requests the Human Rights Council to formally adopt the draft basic principles and guidelines on remedies and procedures on the right of anyone deprived of his or her liberty by arrest or detention to bring proceedings before court.**

84. **The Human Rights Council may wish to request the Working Group, with the support of OHCHR, to undertake an in-depth analysis of arbitrary detention as a consequence of international or national drug policies, taking into account the information provided by States, international and regional organizations, organs, agencies and bodies of the United Nations system, and other relevant stakeholders, and to submit to the Council a report thereon at the end of 2017.**

85. **The Human Rights Council may wish to request the Working Group to prepare, with the support of OHCHR, an analytical report on the principles of legality, proportionality, necessity and appropriateness applicable to avoid arbitrary detentions, taking into account the lessons learned and best practices of national legal systems and international and regional human rights mechanisms, for submission to the Council at the end of 2018.**

86. **The Human Rights Council may wish to remind States that they are under a positive obligation to provide an effective remedy for violations of international human rights law.**

Annex

[Original: Spanish]

Reply from the Government of Cuba concerning opinion No. 50/2014

El Gobierno de Cuba no ha podido hacer nada para impedir los diversos usos que el Gobierno de Estados Unidos ha hecho de la Base Naval en Guantánamo, pues aunque el Estado cubano ejerce su soberanía sobre todo el territorio nacional, son los Estados Unidos los que ejercen jurisdicción sobre el territorio de la Base Naval de Guantánamo, mientras dure su ilegal ocupación.

La actual Constitución de la República de Cuba repudia y considera ilegales y nulos los tratados, pactos o concesiones concertados en condiciones de desigualdad o que desconocen o disminuyen su soberanía y su integridad territorial, como es el caso del Convenio para las Estaciones Carboneras y Navales de 1903, que dio lugar a la ocupación de esta porción del territorio cubano por los Estadas Unidos, y del Tratado de Relaciones entre la República de Cuba y los Estados Unidos de América de 1934, el cual ratificó la permanencia de la Base Naval de los Estados Unidos en Guantánamo, y desde 1959, el gobierno cubano ha reclamado al gobierno estadounidense la devolución de ese espacio del territorio cubano ocupado ilegalmente contra la voluntad de su pueblo.

Los usos que el Gobierno de los Estados Unidos ha dado a la Base Naval en Guantánamo ni siquiera están previstos en los espurios tratados antes mencionados.

El Gobierno de Cuba ha expresado su profunda preocupación por el limbo jurídico que sustenta la permanente y atroz violación por el Gobierno de los Estados Unidos de los derechos humanos de los prisioneros confinados en el centro de detención en la ilegal Base Naval de Guantánamo como un centro de torturas y muertes en custodia.